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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,172	09/17/2003	John W. Schnell	PTG 02-103-7	6313
23531	7590	08/15/2005	EXAMINER	
SUITER WEST SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			CHUKWURAH, NATHANIEL C	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/665,172

Applicant(s)

SCHNELL ET AL

Examiner

Nathaniel C. Chukwurah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 37-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 37-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant is advised that the Notice of Allowance mailed on 5/18/2005 has been vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4-9 and 42-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant is claiming "a pick-off assembly" in claim 4, line 2; "a nail checker assembly" in claim 5, line 2; "a nail lockout assembly" in claim 6, line 2; "a nail spacing assembly" in claim 7, in line 2; "a nail shank pawl assembly" in claim 8, line 2; "a pinion nail verifier assembly" in claim 9, line 2 also in claims 42-46. The elements are disclosed in the specification and it is unclear as to what applicant is referring.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8, 10-13, 37, 39-42, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 6,431,428).

With regard to claim 1, Chen discloses an articulating pusher assembly comprising: an articulating pusher (32), an adapter (pivot point) pivotally coupled with the articulating pusher (32), a casing (30) coupled with the adapter, and coupled with the nail loading assembly (20); a spool assembly (24) coupled with casing (30) and nail loading assembly (20).

The articulating pusher pivots and fully engages the nail (see fig 2).

With regard to claim 2, the nail loading assembly (20) comprises a housing, which includes inherently a cover.

With regard to claim 3, the adjustable angle magazine (20) includes a universal adapter assembly (22) and adjustable assembly (222, 23).

With regard to claim 4, Chen does not expressly state that the adjustable angle magazine comprises a pick-off pivot assembly, the adjustable angle magazine inherently includes pick-off pivot assembly, which is the pushing of the leading nail and placing it in the nail barrel.

With regard to claim 8, Chen shows a nail shank pawl assembly (32 push plate) for pushing the nail.

With regard to claim 10, the adjustable angle magazine of Chen is end-loading magazine.

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With regard to claim 11, the adjustable angle magazine is a modular.

With regard to claim 12, the nail gun of Chen is pneumatic as shown in Figure 2.

With regard to claim 13, the nail gun of Chen is to comprise clutch assembly.

With regard to claim 37, Chen discloses an articulating pusher assembly comprising: means (30) for coupling with the nail loading assembly, means (32) for engaging a nail within the nail loading assembly (20) coupled with the means (casing 30) for coupling with nail loading assembly, wherein the casing is coupled with a spool (24), and rotationally coupled with adapter (pivot point).

With regard to claim 39, the means (32) for engaging a nail is an articulating pusher assembly, pivotally coupled with the casing (30).

With regard to claim 40, the magazine of Chen is adjustable.

With regard to claim 41, the adjustable angle magazine comprises a universal adapter assembly (22).

With regard to claim 42, Chen Chen does not expressly state that the adjustable angle magazine comprises a pick-off pivot assembly, the adjustable angle magazine inherently includes pick-off pivot assembly, which is the pushing of the leading nail and placing it in the nail barrel as described in column 4, lines 19-27.

With regard to claim 47, the angled magazine of Chen is end-load magazine.

With regard to claim 48, the nail loading assembly is a modular.

With regard to claim 49, the nail gun of Chen is a pneumatic nail gun

With regard to claim 50, the nail gun of Chen is to comprise clutch assembly.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Pomernacki (US 3,661,312).

With regard to claims 5 and 43, the angle magazine of Chen lacks nail checker assembly.

Pomernacki teaches a nail checker assembly (506 slot) to permit operator to check condition of the feeding fasteners along guide rail.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide magazine of Chen with a nail checker assembly as taught by Pomernacki in order to check condition of the feeding fasteners along guide rail.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Grikiset al. (US 4,389,012)

With regard to claim 6, Chen lacks lockout assembly.

Grikis et al. discloses a lockout assembly (204) for preventing firing of the tool to discharge a nail when less than a minimum number of a few nails are in the feed path (col. 8, lines 30-31).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide tool of Chen with a lock-out assembly as taught by Grikis et al. in order to

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prevent firing of the tool to discharge a nail when less than a minimum number of a few nails are in the feed path (col. 8, lines 30-31).

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Pomernacki (US 3,661,312).

With regard to claims 7 and 9, Chen lacks a nail spacing verification and nail verifier assembly.

Pomernacki teaches a nail spacing verification and nail verifier assembly (506 slot) to permit operator to move independent or short section of collated fasteners along guide rail (col. 11, lines 35-36).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide magazine of Chen with a nail spacing verification assembly and nail verifier assembly as taught by Pomernacki in order to move independent or short section of collated fasteners along guide rail.

Claims 44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Pomernacki (US 3,661,312).

With regard to claims 44 and 46, Chen lacks a nail spacing verification and nail verifier assembly.

Pomernacki teaches a nail spacing verification and nail verifier assembly (506 slot) to permit operator to move independent or short section of collated fasteners along guide rail (col. 11, lines 35-36).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide magazine of Chen with a nail spacing verification assembly and nail verifier assembly

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as taught by Pomernacki in order to move independent or short section of collated fasteners along guide rail.

With regard to claim 45, Chen shows a nail shank pawl assembly (32 push plate) for pushing the nail.

### ***Conclusion***

Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

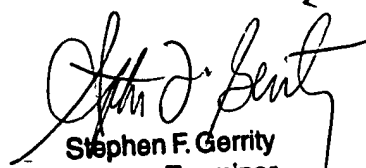
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is ~~703-872-9306~~ 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

June 27, 2005.

  
Stephen F. Gerrity  
Primary Examiner